

'Privacy' a bar to disclosure of electronic GIS maps by FEMA

- **A non-profit environmental group is not entitled to electronic versions of Federal Emergency Management Agency maps, a federal appellate court ruled this week.**

June 17, 2005 · Electronic maps maintained by the Federal Emergency Management Agency do not have to be given to a non-profit environmental group under the personal privacy exemption of the Freedom of Information Act, the U.S. Court of Appeals in Denver (10th Cir.) ruled Tuesday.

FEMA argued and the court agreed that releasing electronic versions of Geographic Information System maps could allow the group, Forest Guardians, to match mapping data with other data to deduce the names and addresses of policyholders under the National Flood Insurance Program.

Policyholders' identities are protected by Exemption 6 of the FOI Act, the court said.

Forest Guardians first requested the data in January 2001 to geographically trace how federally subsidized flood insurance affects endangered species in New Mexico floodplains. "The government's decision to provide insurance fragments and mars one of our most sensitive and valuable landscapes" by encouraging further floodplain development, Forest Guardians employee John Horning said in an organization news release.

FEMA released paper copies of GIS maps that plotted the location of buildings on the San Juan, Animas, and Rio Grande floodplains and detailed whether they had been built after the surrounding community had bought into the flood insurance program. FEMA redacted the policyholders' names and addresses from the paper maps, citing Exemption 6.

Forest Guardians' second FOI Act request in April 2002 sought the same GIS maps in electronic format. FEMA refused to disclose them, arguing that electronic data would allow the group to deduce the insurance policyholders' identities already deemed FOI Act-exempt. Forest Guardians sued, but a federal trial court found in FEMA's favor, and Forest Guardians appealed.

Senior Judge Bobby R. Baldock wrote for the unanimous three-judge appellate panel that the requested electronic access was of "*nonexistent* public interest" because the "information Plaintiff now seeks is merely cumulative of the information FEMA already provided," Baldock wrote.

Although Judge Harris Hartz joined the majority, he filed a separate concurrence that hinted that the result might have been different had the factual record been more developed. "At oral argument Forest Guardians asserted that it might be able to evaluate FEMA's conduct better if it had the precise locations of structures, which could be obtained from the electronic GIS files but were not discernible from the maps that FEMA had provided." Forest Guardians failed to present that argument before the trial court, though, Hartz said, and so it was "not properly before us on appeal."

FEMA is also embroiled in litigation for its invocation of the privacy exemption in Florida, where it refused to release documents containing personally identifying information pertaining to hurricane relief fund claimants. Four newspapers investigating allegedly fraudulent claims filed a federal FOI Act lawsuit against FEMA in March to gain access to the records.

(Forest Guardians v. Federal Emergency Management Agency; Requester Counsel: Steven Sugarman; Denver, Colo.) -- [RL](#)